

Fraudulent Trustees.

No. V.

**FRAUDULENT
TRUSTEES.**

AN ACT to make better provision for the Punishment of Frauds committed by Trustees, Bankers, and other Persons intrusted with Property.

[24th September, 1860.]

Preamble.

WHEREAS it is expedient to make better provision for the punishment of frauds committed by trustees, bankers, and other persons intrusted with property :

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

Short Title.

1. The Short Title of this Act shall be "*The Fraudulent Trustees' Act, 1860.*"

Trustees fraudulently disposing of property guilty of misdemeanour.

2. If any person, being a trustee of any property for the benefit, either wholly or partially, of some other person or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same or any part thereof to or for his own use or purposes, or shall with intent aforesaid otherwise dispose of or destroy such property or any part thereof, he shall be guilty of a misdemeanour.

Bankers &c. fraudulently selling &c. property intrusted to their care guilty of misdemeanour.

3. If any person, being a banker, merchant, broker, attorney, or agent, and being intrusted for safe custody with the property of any other person, shall, with intent to defraud, sell negotiate transfer pledge or in any manner convert or appropriate to or for his own use such property or any part thereof, he shall be guilty of a misdemeanour.

Persons under powers of attorney fraudulently selling property guilty of misdemeanour.

4. If any person intrusted with any power of attorney for the sale or transfer of any property shall fraudulently sell or transfer or otherwise convert such property or any part thereof to his own use or benefit, he shall be guilty of a misdemeanour.

Bailees fraudulently converting property to their own use guilty of larceny.

5. If any person, being a bailee of any property, shall fraudulently take or convert the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, he shall be guilty of larceny.

Directors &c. of any Body Corporate or Public Company fraudulently appropriating property.

6. If any person, being a director, member, or public officer of any Body Corporate or Public Company, shall fraudulently take or apply for his own use any of the money or other property of such Body Corporate or Public Company, he shall be guilty of a misdemeanour.

Or keeping fraudulent accounts.

7. If any person, being a director, public officer, or manager of any Body Corporate or Public Company, shall as such receive or possess himself of any of the money or other property of such Body Corporate or Public Company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause or direct to be made a full and true entry thereof in the books and accounts of such Body Corporate or Public Company, he shall be guilty of a misdemeanour.

Or wilfully destroying books &c.

8. If any director, manager, public officer, or member of any Body Corporate or Public Company shall, with intent to defraud, destroy alter mutilate or falsify any of the books papers writings or securities belonging to the Body Corporate or Public Company of which he is a director or manager, public officer, or member, or make or concur in the making of any false entry or any material omission in any book of account or other document, he shall be guilty of a misdemeanour.

9. If

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9. If any director, manager, or public officer of any Body Corporate or Public Company shall make circulate or publish, or concur in making circulating or publishing, any written statement or account which he shall know to be false in any material particular with intent to deceive or defraud any member, shareholder, or creditor of any such Body Corporate or Public Company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any money or property to such Body Corporate or Public Company, or to enter into any security for the benefit thereof, he shall be guilty of a misdemeanour.

Or publishing fraudulent statements guilty of misdemeanour.

10. If any person shall receive any chattel money or valuable security which shall have been so fraudulently disposed of as to render the party disposing thereof guilty of a misdemeanour under any of the provisions of this Act, knowing the same to have been so fraudulently disposed of, he shall be guilty of a misdemeanour, and may be indicted and convicted thereof whether the party guilty of the principal misdemeanour shall or shall not have been previously convicted or shall or shall not be amenable to justice.

Persons receiving property fraudulently disposed of, knowing the same to have been so, guilty of misdemeanour.

11. Every person found guilty of a misdemeanour under this Act shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three years, or to suffer such other punishment, by imprisonment for not more than two years with or without hard labour, or by fine, as the Court shall award.

Punishment for a misdemeanour under this Act.

12. Nothing in this Act contained shall enable or entitle any person to refuse to make a full and complete discovery or to answer any question or interrogatory in any civil proceeding, in any Court of Law or Equity or in any Court of Bankruptcy or Insolvency; but no such discovery, nor any such answer to any such question or interrogatory, shall be admissible in evidence against such person in any proceeding under this Act.

No person exempt from answering questions in any Court. Evidence not admissible in prosecutions under this Act.

13. Nothing in this Act contained, nor any proceeding conviction or judgment to be had or taken thereon against any person under this Act, shall prevent lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against this Act might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action or suit against him; and nothing in this Act contained shall affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated.

No remedy at law or in equity shall be affected.

Convictions shall not be received in evidence in civil suits.

14. No proceeding or prosecution for any offence included in the second section but not included in any other section of this Act shall be commenced without the sanction of the Attorney-General of New Zealand: Provided that where any civil proceeding shall have been taken against any person to whom the provisions of the said second section but not of any other section of this Act may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this Act without the sanction of the Court or Judge before whom such civil proceeding shall have been had or shall be pending.

No prosecution shall be commenced without the sanction of the Attorney-General, or in certain cases of the Court or a Judge.

15. If upon the trial of any person under this Act it shall appear that the offence proved amounts to larceny, he shall not by reason thereof be entitled to be acquitted of a misdemeanour under this Act.

If offence amounts to larceny, person not to be acquitted of a misdemeanour.

16. In every prosecution for any misdemeanour against this Act the Court before which any such offence shall be prosecuted or tried may allow the expenses of the prosecution in all respects as in cases of felony.

Costs of prosecution.

17. No misdemeanour under this Act shall be prosecuted or tried in any District Court.

Misdemeanours not triable at District Courts.

Remission of Penalties.

Interpretation of
certain terms.

18. The word "Trustee" shall in this Act mean a trustee on some express trust created by some deed will or instrument in writing, and shall also include the heir and personal representative of any such trustee, and also all executors and administrators, liquidators under "*The Joint Stock Companies Act, 1860,*" and all Assignees in Bankruptcy and Insolvency. The word "Property" shall include every description of real and personal property goods raw or other materials money debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods; and such word property shall also denote and include not only such real and personal property as may have been the original subject of a trust, but also any real or personal property into which the same may have been converted or exchanged, and the proceeds thereof respectively, and anything acquired by such proceeds.
